

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No 1612 TO 1616 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

KALYANDASJI GOMTIDASJI

Appearance:

FA No.1612 & 1613/88

Mr P G Desai, G.P. for the State

FA No.1614 & 1615/88

Mr H L Jani, AGP for the State

FA No.1616/88

Mr R Rawal, AGP for the State

MR SHANTILAL S SHAH for Respondent No. 2

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI

Date of decision: 30/03/99

ORAL (COMMON) JUDGEMENT

By means of filing these Appeals under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedures 1908, the State Government has challenged the legality of the common judgment and award dated December 31, 1987 rendered by the learned Assistant Judge, Surendranagar in Land Reference Cases No. 5/80 to 9/80. The lands belonging to the respondents were placed under acquisition pursuant to publication of preliminary Notification under section 4(1) of the Land Acquisition Act on July 12, 1973. We may state that Land Reference Case No.5/80 was treated as main case and the parties had led common evidence therein. As common questions of facts and law are involved in these appeals, we propose to dispose of them by this common judgment.

2. A proposal to acquire (i) Open plots, (ii) Common Plots, (iii) Private roads and (iv) Agricultural land of Village Dudhrej, Taluka Wadhwan, District Surendranagar for the public purpose of Viramgam-Okha-Porbandar Broad-gauge Conversion Scheme, was received by the State Government. On scrutiny of the said proposal, the State Government was satisfied that agricultural and non-agricultural land of village Dudhrej were likely to be needed for the said public purpose. Accordingly notification under section 4(1) of the Land Acquisition Act, 1894 (for short 'the Act') was issued which was published in the Government Gazette on July 12, 1973. The lands to be acquired were specified in the said Notification. The owners whose lands were sought to be acquired were served with notices under section 4 of the Act. They had filed their objections against the proposed acquisition. After considering their objections, the Land Acquisition Officer had forwarded his report to the State Government as contemplated by section 5-A(2) of the Act. On consideration of the said report, the State Government was satisfied that agricultural and non-agricultural land of village Dudhrej which were specified in the notification published under section 4(1) of the Act were needed for the public purpose of Viramgam-Okha-Porbandar Broad-gauge Conversion Scheme. Therefore, declaration under section 6 of the Act was made which was published in the Official Gazette on February 28, 1973. The interested persons were thereafter served with notices under section 9 of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation ranging between Rs.1.23 to Rs.2.47 for different kinds of lands, but having regard to the materials placed before him, the Land Acquisition

Officer, by his award dated November 30, 1978, offered compensation to the claimants at the rate of Rs. 0.87 to Rs.1.31 for agricultural and non-agricultural lands respectively. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requesting the Land Acquisition Officer to refer the matter to the Court for the purpose of determining of appropriate compensation. Accordingly References were made to the District Court, Surendranagar which were numbered as Land Reference Cases No. 5/80 to 9/80. In the Reference Applications the claimants pleaded that the lands acquired were very valuable and having regard to the over all development which had taken place near the acquired lands as well as potentiality of the agricultural land for building purpose, they were entitle to higher compensation. Before the Reference Court, the claimants claimed that they should be paid compensation at the rate of Rs.2.46 per sq.metre. The Reference Applications were contested by the present appellants vide written statement at Exh.12. The Reference Applications were amended, and therefore, amended written statement was filed at Exh.25. It was pleaded in the reply that those claimants who had not laid any claim in response to service of notices under section 9 of the Act were not entitled to any enhanced compensation. It was averred that the Land Acquisition Officer had taken into consideration all the relevant factors before making the award, and therefore, the Reference Applications should be dismissed. Upon rival assertions made by the parties, necessary issues for determination were raised by the Reference Court at Exh.13. In order to substantiate the claim advanced in the Reference Applications, the claimants examined -

- (i) Mahant Kalyandas Gomtidias at Exh.30
- (ii) Chandubha Dhirubha at Exh.31
- (iii) Chhaganbhai Gangarambhai at Exh.35
- (iv) Hirjibhai Kehabhai at Exh.40
- (v) Mohabhatsingh Sardarsingh at Exh.44

On behalf of the State Government, two witnesses were examined namely;

- (i) Parshottambhai Nanjibhai at Exh.48
- (ii) Valjibhai Dahyabhai Vaghela at Exh.49

The claimants did not produce any sale instances to enable the Court to determine market value of the acquired lands. The witnesses examined on behalf of the claimants stated before the court that each claimant was

raising three crops in a year and was earning Rs.10,000/as net profit from the sale of agricultural produces. As no sale instances were produced by the claimants, the Reference Court proceeded to determine market value of the acquired lands on yield basis. The Reference Court, on appreciation of the evidence, held that the income of the claimants from the lands under acquisition was Rs.10,000/- per acre after deducting expenses of cultivation. The Reference Court further held that normally, multiplier of 10 to 15 should be adopted for the purpose of ascertaining market value of the lands acquired on yield basis, but no multiplier was required to be adopted in the facts of the present case as the compensation was to be paid by the State Government from public exchequer. The Reference Court deduced that the market value of the irrigated and non-irrigated lands was same. In the ultimate decision, the Reference Court has awarded compensation to the claimants at the rate of Rs.2.46 paise by the impugned common award giving rise to the present appeals.

3. Learned Government Pleader submitted that the determination of compensation by the Reference Court on yield basis is erroneous and therefore, the State appeals should be allowed. Learned Advocate vehemently submitted that no evidence was produced by the claimants to substantiate their claim that each claimant was earning net profit of Rs.10,000/- per acre from the sale of agricultural produces, and therefore, the impugned common award should be set aside. What was highlighted was that additional amount of compensation as envisaged under section 23(1-A) of the Act at the rate of 12% should not have been awarded, as award was made by the Land Acquisition Officer on November 30, 1978, and therefore, that part of the award deserves to be set aside. It was asserted on behalf of the Appellant that the claimants are not entitled to interest on solatium payable to them under Section 23(2) of the Act, and therefore, the direction given by the Reference Court to pay interest on amount of solatium should be quashed.

4. Mr G M Amin, learned Advocate for the claimants submitted that evidence of the claimants establishes that the income derived by the claimants from agricultural lands was Rs.10,000/- per acre, and therefore, just determination of the compensation made by the Reference Court should not be interfered with by this Court in the present appeals. What was stressed was that several lands of this very village were placed under acquisition pursuant to publication of different preliminary Notifications under section 4(1) of the Act on June 28,

1973 wherein the Land Acquisition Officer had offered compensation to the claimants ranging between Rs.2.50 paise to Rs. 5/- per sq.metre by different awards and in References the Reference Court had awarded compensation to the claimants to the claimants of those cases at the rate of Rs.12/- per sq.metre which was subsequently modified by the High Court First Appeals No.1555/88 to 1576/88 and other Appeals vide judgment dated March 23, 1999 holding that the claimants of those cases were entitled to compensation at the rate of Rs.12/- per sq.metre for non-agricultural lands and at the rate of Rs.9/- per sq.metre for agricultural lands, and therefore, the compensation determined by the Reference Court in the present case, which is on lower side should not be set aside by the Court. Learned Counsel for the claimants further submitted that possession of the acquired lands was taken on December 28, 1973, and therefore, direction ought to have been given by the Reference Court to pay interest at the rate of 9% per annum from December 28, 1973 for a period of one year and thereafter at the rate of 15% per annum till the realization of the amount.

5. We have heard the learned Counsel for the parties at length and we have also gone through the record of the case. Normally the methods of valuations are -

(i) Opinion of experts

(ii) The price paid within a reasonable time

in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages, and

(iii) A number of year's purchase of the actual

or immediately prospective profits of the lands acquired.

Normally, the method of capitalising actual or immediately prospective profits or the rent of a number of year's purchase is not resorted to, if there is evidence of comparable sales or other evidence for computation of the market value. In this case, the claimants did not produce any sale instances either relating to the acquired lands or the lands adjacent to those acquired lands, and therefore, the Reference Court was justified in resorting to yield method for the purpose of determining market value of the acquired lands. The Supreme Court in the case of State of Gujarat & Ors. v. Rama Rana & Ors., reported in 1997 (3) GLR 1954, has held that the Court has statutory duty to the society to subject oral evidence led by the claimants to

a great scrutiny and determine a just market value of the lands acquired. If the evidence of 5 witnesses examined on behalf of the claimants is subjected to scrutiny, it becomes evident that they were taking one crop in a year and were earning net profit of Rs.10,000/- per year from one acre of land. We may state that the other lands of village Dudhrej were placed under acquisition pursuant to publication of notifications published under section 4(1) of the Act on June 28, 1973. The Land Acquisition Officer, by different awards, had granted different amounts of compensation and thereupon the References were made to the District Court. In Land Acquisition Case No.2/84 to 22/84 and 37/84, the Reference Court had awarded compensation to the claimants at the rate of Rs.12/- per sq.metre. Feeling aggrieved by the said judgment, First Appeals No.1555/88 to 1576/88 were filed by the State Government in the High Court and the Division Bench of the High Court, by judgment dated March 23, 1997, has held that the claimants of those cases were entitled compensation at the rate of Rs.12/- per sq.metre for non-agricultural lands and Rs.9/- per sq.metre for agricultural lands. In view of the previous award of the Reference Court as modified by the High Court, it cannot be said that determination of compensation in this case is excessive in any manner whatsoever so as to warrant interference of this Court in the present Appeals. On the contrary, we notice that the compensation determined by the Reference Court in this case is too low but unfortunately, the claimants have neither filed cross-appeals nor filed cross objections in the Appeals filed by the State Government, and therefore, we find it difficult to award higher compensation to the claimants. We further notice that the Reference Court in this case was not justified in not applying any multiplier at all while determining compensation on yield basis on the specious plea that compensation was to be paid by the State Government from public exchequer. It hardly needs to be emphasized that in cases of compulsory acquisition of lands, compensation has to be paid from public exchequer but that does not mean that the claimants are not entitled to compensation as per law. Appropriate multiplier ought to have been adopted by the Reference Court while ascertaining market value of the acquired lands in view of several reported decisions of the Supreme Court. However, as noticed earlier, the claimants have not filed either cross Appeals or cross objections, and therefore, the amount of compensation awarded by the Reference Court cannot be enhanced in these Appeals. The finding of the Reference Court that the annual income of the claimants from the lands under acquisition was Rs.10,000/- per acre after deducting

expenses of cultivation is eminently just and is hereby upheld. In view of our finding that the compensation determined by the Reference Court is not on higher side, the Appeals cannot be entertained and are liable to be dismissed on the question of quantum of compensation.

6. So far as the direction given by the Reference Court to pay additional amount of compensation at the rate of 12% is concerned, we notice that the amended provisions of section 23(1-A) were brought into force by the Act of 1894 i.e. after the award dated November 30, 1978 was made by the Land Acquisition Officer. Under the circumstance, the direction could not have been given by the Reference Court to the appellants to pay additional amount of compensation at the rate of 12% per annum as envisaged under Section 23(1-A) of the Act and therefore, that direction deserves to be set aside. In the impugned award, the Reference Court has concluded that possession of the acquired lands was taken in December, 1973, but date is not specified. However, the acquiring authorities as well as the claimants have agreed that the possession of the acquired lands was taken on December 28, 1973, and there is no dispute between the parties on this point. Under the circumstances, we hold that the claimants would be entitled to interest as contemplated under Section 34 of the Act at the rate of 9% per annum from December 28, 1973 and thereafter at the rate of 15% per annum till realization of the amount. We further notice that the Reference Court has directed the appellants to pay interest on solatium payable to the claimants under section 23(2) of the Act. Such a direction could not have been given in view of the judgment of the Supreme Court rendered in case of State of Maharashtra v. Maharau Srawan Hatkar, JT 1995 (2) SC 583. Therefore, the direction given by the Reference Court to pay interest on solatium payable to the claimants under section 23(2) of the Act is also liable to be set aside.

7. For the foregoing reasons, the Appeals filed by the State Government are partly allowed. It is held that the claimants would be entitled to compensation at the rate of Rs.2.46 per sq.metre for the acquired lands. The award passed by the Reference Court regarding damages for the Bandhs and roads is also hereby confirmed. It is held that the claimants will not be entitled to additional amount of compensation as envisaged under Section 23(1-A) of the Act. The claimants shall be entitled to interest at the rate of 9% per annum from December 28, 1973 for a period of one year and thereafter at the rate of 15% per annum till realization of the

amount. The claimants shall not be entitled to interest on solatium payable to them under Section 23(2) of the Act. Rest of the directions given in the award are hereby upheld. There shall be no orders as to cost.

Office is directed to draw decree in terms of this judgment.

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msp